STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED February 15, 2011
v	No. 295531 Oakland Circuit Court
RICARDO COREY HAMPTON, Defendant-Appellant.	LC No. 2009-226120-FH

Before: MURPHY, C.J., and MURRAY and SHAPIRO, JJ.

PER CURIAM.

Defendant was convicted by a jury of second-degree home invasion, MCL 750.110a(3). Defendant's motion for entry of a judgment of acquittal or new trial based on sufficiency and great weight arguments was denied. Defendant appeals as of right. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

A witness testified that she came upon a Ford Mustang that was blocking the street in front of her neighbor's home. The doors of the car, as well as the trunk, were open. After about five minutes, the passenger closed the side door and the trunk so that the witness could pass with her car. As the witness was asking the man if he was lost or needed help, another man came out of the neighbor's house carrying something bulky. When the man saw her, he turned and ran. The witness then pulled her vehicle forward and called the police. The Mustang proceeded to race away, shooting rocks at the witness's car.

A breaking and entering had occurred at the house. There were pry marks around some of the outer doors and windows. A kitchen window had been forced open and pushed in; it was the only point of entry. The police recovered a palm print from the glass on the outside of the kitchen window. After defendant was arrested for an unrelated offense, the police confirmed that his palm print matched that lifted from the window. The owner of the home testified that he did not know defendant, had never given him permission to enter the house, and that defendant would not have had any reason to be in the home or on the property.

The Mustang was traced to a woman who lived in a duplex in Detroit. When the police knocked on her door, defendant answered the door to the adjoining duplex. Defendant denied that he had ever been in Milford, denied that he was in Milford on the day of the home invasion, and claimed that he had walked to East Detroit that day.

Defendant first argues that the evidence was insufficient to identify him as the individual who committed the home invasion. "When reviewing a trial court's decision on a motion for a directed verdict, this Court reviews the record de novo to determine whether the evidence presented by the prosecutor, viewed in the light most favorable to the prosecutor, could persuade a rational trier of fact that the essential elements of the crime charged were proved beyond a reasonable doubt." *People v Aldrich*, 246 Mich App 101, 122-123; 631 NW2d 67 (2001). This is the standard applicable to challenges to the sufficiency of the evidence. *People v Roper*, 286 Mich App 77, 83; 777 NW2d 483 (2009). Determining the weight of the evidence and the credibility of witnesses are generally roles for the jury, not this Court. *People v Wolfe*, 440 Mich 508, 515-516; 489 NW2d 748 (1992). Circumstantial evidence and reasonable inferences that arise from such evidence can constitute satisfactory proof of the elements of the crime. *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999). All conflicts in the evidence must be resolved in favor of the prosecution. *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997).

The point of entry was the kitchen window. Defendant's palm print was found on the outside of this window. From this evidence, a reasonable inference would arise indicating that defendant was the one who forced open the window and entered the house. This conclusion is supported by *People v Ware*, 12 Mich App 512; 163 NW2d 250 (1968), wherein fingerprints were the sole basis for identification. There, this Court stated, "'To warrant a conviction, the fingerprints corresponding to those of the accused must have been found in the place where the crime was committed under such circumstances that they could only have been impressed at the time when the crime was committed.'" *Id.* at 515, quoting 28 ALR 2d 1154. The general rule is that fingerprint evidence standing alone is sufficient to establish a defendant's identity if the prints are found at the crime scene and could only have been made at the time of the crime's commission. *People v Himmelein*, 177 Mich App 365, 374-375; 442 NW2d 667 (1989). Because the print was directly on the outside of the kitchen window, which was the point of entry, the circumstances indicate that the print would have been impressed when the window was forced open.

Furthermore, there was additional evidence pointing to defendant as the perpetrator. The victim testified that defendant had never had any reason to be at his home and defendant told police that he had not been at the home.[1] However, the print established that defendant had been there. Moreover, defendant's proximity to the car used in the robbery greatly strengthened the

[1] Defendant attached an affidavit to his appellate brief that was executed after trial and sentencing and which averred that defendant had done various home improvement jobs for his brother, but defendant could not remember the addresses where the work was performed. Defendant's affidavit was apparently intended to suggest that he may have innocently left the palm print while doing a home improvement job. First, this evidence is not part of the trial record and thus cannot be considered. Second, the affidavit is so speculative and vague that it adds nothing of relevance for purposes of addressing the issues on appeal, even if it could be considered.

inference that defendant committed this crime. The circumstantial evidence in this case was more than sufficient to give rise to a reasonable inference that defendant was the person who broke into the victim's home.

Defendant next argues that the verdict was against the great weight of the evidence. He bases this argument on the same facts discussed above. We review the denial of his motion for a new trial on this basis for an abuse of discretion. *Roper*, 286 Mich App at 84. A new trial can be granted on the basis that the verdict was against the great weight of the evidence only where the evidence preponderates heavily against the verdict and a serious miscarriage of justice would result if the verdict were allowed to stand. *People v Lemmon*, 456 Mich 625, 627; 576 NW2d 129 (1998).

Here, the evidence did not preponderate heavily against the verdict. The palm print, coupled with there never having been a reason for defendant to be at the victim's home and defendant's proximity to the car used in the home invasion, supported the verdict.

Defendant next argues that the trial court erred in failing to sua sponte read CJI2d 4.15 to the jury, that the prosecutor committed misconduct by failing to request it, and that defense counsel provided ineffective assistance by failing to request it. We conclude that these claims fail because the jury instruction was not warranted.

CJI2d 4.15 reiterates the holding from *Ware* set forth above. The use note for this instruction states that it is to be given "only where the sole evidence of identity comes from fingerprints." In *People v Nash*, 110 Mich App 428; 313 NW2d 307 (1981), rev'd in part on other grounds 418 Mich 196 (1983), the defendant's fingerprints were found on a bullet in a bag of ammunition. There was a significant amount of other evidence implicating the defendant in the killing of her husband. This Court held that there was no error in refusing to give the fingerprint instruction, stating, "The above instruction need only be given where the jury is asked to convict on the basis of fingerprint (or footprint) evidence *alone*." *Id*. at 453 (emphasis added).

Here, there was also additional evidence. Defendant lived next to the owner of the car used in the home invasion. While this additional evidence alone would not have been a basis for identifying defendant by itself, it did buttress the fingerprint evidence. Thus, there was no error in failing to give the instruction. We also find that the issue was waived when defense counsel expressed satisfaction with the instructions as given. *People v Carter*, 462 Mich 206, 215; 612 NW2d 144 (2000). And, in the context of the ineffective assistance claim, we conclude that, assuming error and deficient performance, defendant has failed to establish that there is a reasonable probability that, but for counsel's presumed error, the result of the proceedings would have been different. *People v Carbin*, 463 Mich 590, 599-600; 623 NW2d 884 (2001).

Affirmed.

/s/ William B. Murphy
/s/ Christopher M. Murray
/s/ Douglas B. Shapiro